STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ALVAREZ Minors.

UNPUBLISHED
January 28, 2014

No. 315425
Oakland Circuit Court
Family Division
LC No. 2011-786314-NA

Before: SAAD, P.J., and CAVANAGH and K. F. KELLY, JJ.

PER CURIAM.

Respondent appeals the trial court's order that terminated his parental rights pursuant to MCL 712A.19b(3)(c)(*i*) and (g) on a variety of claims.[1] For the reasons stated below, we affirm.

I. PROCEDURAL HISTORY

According to the state's July 2011 petition, respondent resided in Mexico and provided no support for the children for three years, and the children's mother was in jail. The mother subsequently entered a no-contest plea to an amended petition and the court assumed jurisdiction over the children. Treatment plans were developed for the parents and the court conducted statutory reviews during 2012. Respondent appeared by telephone at the review hearings, as he was barred from re-entering the United States because of immigration issues. In December 2012, a termination petition was filed, based on respondent's inability to return the United States and his failure to plan for his child. After a hearing, the trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i) (the conditions that led to adjudication continue to exist and there is no reasonable likelihood that conditions will be rectified within a reasonable time) and MCL 712A.19b(3)(g) (the parent, without regard to intent, fails to provide proper care or custody for the child). On appeal, respondent claims that: (1) the trial court lacked the authority to compel him to comply with a treatment plan or terminate his parental rights; (2) the trial court labeled him an unfit parent in the absence of evidence of such; and (3) DHS did not provide him with a treatment plan or follow its own operational procedures in his case.

[1] Respondent was the legal father of all four children named in the order, because he was married to the children's mother when they were born. However, only the eldest is his biological child, and he does not challenge the order as it relates to the other children.

II. ANALYSIS

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). The trial court's decision is reviewed for clear error. *In re Trejo*, 462 Mich 341, 356–357; 612 NW2d 407 (2000). A finding of fact is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Here, the trial court based its termination on MCL 712A.19b(3)(c)(*i*) and (g), which state:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
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> * * *
>
> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:
>
> (*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
>
> * * *
>
> (g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

A. JURISDICTION CLAIM

Respondent unconvincingly argues that the court lacked authority to order him to comply with a treatment plan or terminate his parental rights because its jurisdiction was based solely on the mother's plea. As our Court explained:

> [O]nce the family court acquires jurisdiction over the children, MCR 5.973(A) [now MCR 3.973(A)] authorizes the family court to hold a dispositional hearing to determine measures to be taken . . . against any adult. . . . MCR 5.973(A)(5)(b) [now MCR 3.973(F)(2)] then allows the family court to order compliance with all or part of the case service plan and may enter such orders as it considers necessary in the interests of the child. Consequently, after the family court found that the children involved in this case came within its jurisdiction on the basis of [the mother's] no-contest plea and supporting testimony at the adjudication, the family court was able to order [the father] to . . . comply with other conditions necessary to ensure that the children would be safe with him even though he was

not a respondent in the proceedings. [*In re CR*, 250 Mich App 185, 202–203; 646 NW2d 506 (2001) (internal quotations and emphasis deleted).]

The trial court was accordingly authorized to order respondent's compliance with a treatment plan once it assumed jurisdiction over his child, despite the fact that its jurisdiction was based on the mother's plea. Moreover, as long as the statutory grounds were established by clear and convincing evidence, the court also had the authority to terminate respondent's parental rights. *Id*. at 203.

B. UNFIT PARENTING

Respondent asserts that there was no actual proof that he was an unfit parent, and that the trial court thus violated his right to due process by shifting the burden of proof to him. In fact, there was ample evidence that respondent was an unfit parent. He went to Mexico in 2008 or 2009 and thereafter failed to provide support for his child. And, after leaving the United States, respondent was not involved in his child's life. While this case was pending, respondent informed his attorney that he had no plans to care for his child and was unable to do so, and he also told DHS he was unable to provide for his child financially. Respondent did not provide any financial support while this case was pending and never offered a plan for his child. And although DHS attempted to engage respondent in a treatment plan, he failed to participate. Respondent's claim is accordingly without merit.

C. REUNIFICATION EFFORTS

Respondent's claims that DHS failed to make reasonable efforts to reunify him with his child are equally unavailing. Further, he failed to object or indicate that the services provided to him were inadequate before the termination hearing. This issue is therefore unpreserved. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). We review this issue for plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

Generally, reasonable reunification efforts must be made to reunite the parent and child unless certain aggravating circumstances exist. *In re Mason*, 486 Mich at 152; *In re Frey*, 297 Mich App at 247; MCL 712A.19a(2). However, while DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, respondents have a commensurate responsibility to participate in the services DHS offers. *Id.*

Here, respondent begins by claiming that he never actually received a treatment plan. The trial court found otherwise, and its finding is not clearly erroneous. The testimony established that the court adopted a treatment plan for respondent and that workers involved in the case informed respondent of its various components, both verbally and by letter.

Respondent's other assertions regarding DHS's conduct are equally inaccurate. He claims that DHS failed to follow its own policies when it developed the treatment plan by: (1) not contacting him about his treatment plan; and (2) failing to help him understand the English language. In fact, the evidence shows the reverse: namely, that DHS followed its own policies and attempted to engage respondent in the treatment plan. DHS workers contacted respondent early in the case to discuss his treatment plan, and he was also sent numerous letters regarding the treatment plan. Respondent failed to participate in the treatment plan, despite the fact that he

admitted the (English) letters were translated for him by a relative. He was also provided with a translator at the court hearings he appeared at, and DHS utilized a translation service when contacting him on the phone.[2] Respondent is therefore unable to demonstrate that petitioner failed to make reasonable efforts toward reunification.

Accordingly, the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence under MCL 712A.19b(3)(c)(*i*) and (g), and its judgment is affirmed.

/s/ Henry William Saad
/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly

[2] Respondent also claims that his continued presence in Mexico (presumably because of his immigration status, or lack thereof) is analogous to incarceration, and thus that the trial court cannot terminate his parental rights because "the mere present inability to personally care for one's children as a result of incarceration does not constitute grounds for termination." *In re Mason*, 486 Mich at 160. It goes without saying that this case is factually distinguishable from *In re Mason* because respondent is in Mexico, not prison. In addition, the court did not terminate respondent's parental rights simply because of his immigration-related problems: it also found that he was uninvolved with the child, and that he admitted he could not care for the child.